

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

HAROLD JOHNSON,

Plaintiff,

v.

Civil Action 2:21-cv-4995

Judge Edmund A. Sargus, Jr.

Magistrate Judge Elizabeth P. Deavers

DODDS BODYWORKS, INC., *et al.*,

Defendants.

ORDER

This matter is before the Court for consideration of Plaintiff's Motion for Leave to File Second Amended Complaint and Memorandum in Support, and Plaintiff's Motion to Stay Defendants' Motion to Dismiss for Failure to State a Claim on Which Relief May be Granted. (ECF Nos. 15, 16.) In short, Plaintiff seeks to leave to file a Second Amended Complaint in light of Defendants' Motion to Dismiss, ECF No. 9, and Plaintiff also requests that the Court hold Defendants' Motion to Dismiss in abeyance until the Court resolves Plaintiff's request for leave to file a Second Amended Complaint. (*Id.*)

Plaintiff's requests are not well taken. First, the Court notes that Plaintiff failed to attach his proposed Second Amended Complaint to the subject Motion. (ECF No. 15.) While Plaintiff was not expressly required to attach his proposed Second Amended Complaint to the subject Motion by the Federal Rules of Civil Procedure or this Court's Local Rules, the Court cannot assess whether his proposed amendments would be futile without reviewing Plaintiff's proposed Second Amended Complaint. *See Miller v. Cocke Cty., Tennessee*, No. 21-5585, 2022 WL 103143, at *3 (6th Cir. Jan. 11, 2022) ("A court may deny a motion to amend if it would be

futile, meaning that ‘the proposed amendment would not permit the complaint to survive a motion to dismiss.’”) (quoting *Miller v. Calhoun County*, 408 F.3d 803, 817 (6th Cir. 2005)).

Accordingly, Plaintiff’s Motion for Leave to File Second Amended Complaint and Memorandum in Support, ECF No. 15, is **DENIED WITHOUT PREJUDICE** to refile, and Plaintiff’s Motion to Stay Defendants’ Motion to Dismiss for Failure to State a Claim on Which Relief May be Granted, ECF No. 16, is **DENIED AS MOOT**. Should Plaintiff still seek to file a Second Amended Complaint, he is **DIRECTED** to send a copy of the proposed Second Amended Complaint to Defendants prior to re-filing his motion for leave to amend. If Defendants do not consent to the proposed Second Amended Complaint, then Plaintiff may re-file his motion for leave to amend, provided that he attaches a copy of the proposed Second Amended Complaint to the motion for the Court’s review.

Given that Plaintiff’s deadline to respond to Defendants’ Motion to Dismiss has passed, Plaintiff is **DIRECTED** either to respond to Defendants’ Motion to Dismiss, or to seek leave to file a Second Amended Complaint, by no later than **FEBRUARY 3, 2022**.

IT IS SO ORDERED.

DATED: January 27, 2022

/s/ Elizabeth A. Preston Deavers
ELIZABETH A. PRESTON DEAVERS
UNITED STATES MAGISTRATE JUDGE